

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0346

HOUSE BILL NO. 1037

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the definition of a bad debt and modify the
2 circumstances under which a bad debt may be deducted for taxation purposes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-30 be amended to read as follows:

5 10-45-30. For purposes of this chapter, a bad debt means the same as the term is defined at
6 26 U.S.C. 166 as of January 1, 2005, and is any portion of the purchase price of a transaction
7 that a seller has reported as taxable and for which the seller or any party related to the seller
8 within the meaning of section 267 or 707 of the Internal Revenue Code (related party), as of
9 January 1, 2003, or any disregarded entity for federal income tax purposes that is owned by the
10 seller or a related party, ~~legally claims as a bad debt deduction~~ has written off as uncollectible
11 for federal income tax purposes. In computing the amount of tax due, a seller may deduct bad
12 debts from the total amount upon which the tax is calculated for any return. Any deduction taken
13 or refund paid which is attributed to bad debts may not include interest. Bad debts include
14 worthless checks, worthless credit card payments, and uncollectible credit accounts. Bad debts
15 do not include financing charges or interest, sales or use taxes charged on the purchase price,



1 uncollectible amounts on property that remain in the possession of the seller until the full
2 purchase price is paid, expenses incurred in attempting to collect any debt, debts sold, or
3 assigned to unrelated third parties for collection, and repossessed property. No bad debt
4 deduction may be claimed by any person that has purchased accounts receivable for collection
5 unless the person is a successor that has acquired the entire business of the seller that incurred
6 the bad debt, the person is a related party, or the person is a disregarded entity for federal
7 income tax purposes that is owned by the seller or a related party.

8 ~~Bad debts shall be deducted within twelve months following the month in which the bad~~
9 ~~debt has been charged off~~ A bad debt may be deducted on the return for the period during which
10 the bad debt is written off as uncollectible in the claimant's books and records and is eligible to
11 be deducted for federal income tax purposes. For purposes of this section, a claimant who is not
12 required to file federal income tax returns may deduct a bad debt on a return filed for the period
13 in which the bad debt is written off as uncollectible in the claimant's books and records and
14 would be eligible for a bad debt deduction for federal income tax purposes if the claimant was
15 required to file a federal income tax return. If a deduction is taken for a bad debt and the seller
16 subsequently collects the debt in whole or in part, the tax on the amount so collected shall be
17 paid and reported on the next return due after the collection. A seller may allocate its bad debts
18 among states if the books and records of the seller claiming the bad debt can support such
19 allocation.

20 ~~Notwithstanding the provisions of § 10-59-22, a seller~~ If a seller's amount of bad debt
21 exceeds the amount of taxable sales for the period during which the bad debt is written off, the
22 seller may obtain a credit or refund of tax on any amount of bad debt that exceeds the amount
23 ~~of taxable sales within the twelve-month period defined by that bad debt. A~~ as provided in
24 chapter 10-59. However, a credit or refund under this section paragraph may not include

1 interest.

2 If a seller's filing responsibilities have been assumed by a certified service provider as
3 defined in § 10-45C-1, the service provider may claim, on behalf of the seller, any bad debt
4 allowance provided by this section. The service provider shall credit or refund the full amount
5 of any bad debt allowance or refund received to the seller.